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to the exterior surface of the middle portion, wherein movement of a cat or other pet within the elongated tube causes the emission of noise from the crinkly plastic film.

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9. (Amended Twice) The cat toy of claim 1 wherein a catnip treat is suspended from an interior surface of the middle portion.

REMARKS

This Amendment is in response to the non-final Office Action dated December 16, 2002. A petition for a three-month extension pursuant to 37 C.F.R. §1.136 for response expiring June 16, 2003 is filed contemporaneously herewith. The requested fee has been enclosed. Applicants request reconsideration of the rejections of the claims.

Claims 1, 5-11, and 13-20 are pending in the application, with claims 1 and 13 being independent claims. Note that a markup of the amended claim is attached to this amendment.

Claim Objection Addressed:

The Examiner objected to claim 1 because of an informality after "comprising." Applicants have amended the problematic language in claim 1, thereby overcoming the Examiner's objection.

Rejection Under §112, Second Paragraph Addressed

The Examiner rejected claim 9, second paragraph because the term "the catnip" lacks prior antecedent basis. Applicants have amended the problematic language in claim 9, thereby overcoming the §112 rejection.

Rejection of Claims 1, 6, 8, 10, 11, 13, 14 Under §103 Addressed

Claims 1, 6, 8, 10, 11, 13 and 14 are rejected under 35 U.S.C. §103(a) as being unpatentable over Curley et al in view of Strawcutter et al. In support of the rejection for claim 1, it is asserted that Curley discloses "a cat toy comprising a flexible elongated tube capable of being positioned in a multitude of curved position since it is collapsible [T]he tube being made from a crinkly plastic film molded to a tubular shaped coiled wire, the wire scaffolding having a plurality of loops." It is further asserted that Strawcutter discloses a "helical tube recreational component for a playground unit which is capable of being a cat toy, the tube is positioned in a multitude of S-shaped curves as shown in

fig. 1 to make it more fun for the user. It would have been obvious to one having ordinary skill in the art at the time of the invention was made to employ a multitude of S-shaped curves as taught by Strawcutter in the elongated tube of Curley in order to make it more fun for the user to travel in a twist and turn manner.” It is respectfully submitted that combining Curley and Strawcutter does not render amended claim 1, and hence dependent claims 6, 8, 10, 11, 13 and 14 obvious under 35 U.S.C. §103.

The Curley and Strawcutter patents, alone or in combination, do not teach or suggest all of the claim limitations in claim 1. To establish a prima facie case of obviousness, the prior art references when combined must teach or suggest all the claim limitations. See MPEP §706.02(j). Claim 1 of the subject application requires at least “a flexible elongated tube capable of being positioned in a multitude of S-shaped curves, . . . the elongated tube made from a crinkly plastic film molded to a plurality of spring-steel coiled wire loops which form a helical frame structure, the helical frame structure having at least one loop per inch along the entire length of the elongated tube . . .” Curley discloses a single linear elastic central support achieving a spiral path as it traverses from the front support to the back support, the support design not being able for positioning in a S-shape. Curley, however, does not teach or suggest a tube that can be positioned in a multitude of S-shaped curves, or having a plurality of spring-steel coiled wire loops which form a helical frame structure, the helical frame structure having at least one loop per inch along the entire length of the elongated tube.

Strawcutter discloses a helical tube or slide composed of a series of vertical and transverse struts interconnected by various saddles or other interconnecting devices. (See Col. 3, lines 25 – 35). The tube being constructed from a material durable enough to enable children to safely pass or slide through the component. The struts are interconnected via mating engagement with male and female tube segments 11, 13. As such, Strawcutter does not teach or suggest a tube having a plurality of spring-steel coiled wire loops which form a helical frame structure, the helical frame structure having at least one loop per inch along the entire length of the elongated tube.

Thus, the combination of Curley and Strawcutter does not disclose or suggest all of the claim limitations of claim 1. Accordingly, claim 1 is believed to be allowable under 35 U.S.C. §103. Claims 6, 8, and 10 depend from and include all of the limitations

of claim 1. Accordingly, claims 6, 8, and 10 are believed allowable under 35 U.S.C. §103 for at least the same reasons as claim 1.

Claim 13 includes similar limitations as amended claim 1, which are neither disclosed or suggested by the combination of Curley and Strawcutter, *i.e.*, “providing a spring-steel coiled wire having at least one revolution of coiled wire every inch; ... the flexible elongated tube being capable of positioning in a S-shaped curve.” As such, for at least the same reasons as claim 1 is believed allowable under 35 U.S.C. §103, claims 13 and dependent claim 14 are believed allowable.

Applicant also believes that claims 1, 6, 8, 10, 13 and 14 are not obvious under 35 U.S.C. §103 over any combination that requires Curley and Strawcutter because there is no motivation to combine the patents. The mere facts that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination. See MPEP §2143.01. The Curley patent discloses a collapsible child/ pet tube designed with a linear elastic central support held in place by a pair of end loops. The collapsible child or pet tube collapses in a linear, *i.e.*, non-curved fashion. The patent to Strawcutter discloses a spiral helical tube useful as playground equipment. The use of the helical support structures to form a helical slide is accomplished using a combination of rigid/durable male and female segments. There is no motivation to combine the spiral helical tube structure of playground equipment/slides into the collapsible child/pet tube of Curley. To do so would render the Curley disclosed collapsible tube non-functional, as the Curley tube is predicated on a collapsible linear spiral support member that collapses along its own linear length.

Therefore, there is no suggestion or motivation to combine the teachings in the Curley and Strawcutter patents. For this additional reason it is believed that claim 1 and all dependent claims thereto are patentable under 35 U.S.C. §103(a) over the Curley and Strawcutter patents, and such indication is respectfully requested.

Rejection of Claims 5 and 15 Under §103 Addressed

Claims 5 and 15 have been rejected as obvious over Curley as modified by Strawcutter and Johnson. However, since claims 5 and 15 include the limitations from amended claim 1, claims 5 and 15 are believed allowable for the same reasons as discussed above for claim 1.

Rejection of Claims 7 and 17 Under §103 Addressed

Claims 7 and 17 have been rejected as obvious over Curley as modified by Strawcutter and Westphal. However, since claims 7 and 17 include the limitations from amended claim 1, claims 7 and 17 are believed allowable for the same reasons as discussed above for claim 1.

Rejection of Claims 7, 18 and 19 Under §103 Addressed

Claims 7, 18 and 19 have been rejected as obvious over Curley as modified by Strawcutter and Maggio. However, since claims 7, 18 and 19 include the limitations from amended claim 1, claims 7, 18 and 19 are believed allowable for the same reasons as discussed above for claim 1.

Rejection of Claims 9 and 16 Under §103 Addressed

Claims 9 and 16 have been rejected as obvious over Curley as modified by Strawcutter and Zoroufy. However, since claims 9 and 16 include the limitations from amended claim 1, claims 9 and 16 are believed allowable for the same reasons as discussed above for claim 1.

Rejection of Claim 20 Under §103 Addressed

Claim 20 has been rejected as obvious over Curley as modified by Strawcutter and Zheng. However, since claim 20 includes the limitations from amended claim 1, claim 20 is believed allowable for the same reasons as discussed above for claim 1.

CONCLUSION

Claims 1, 5-11, and 13-20 of this application remain pending. All claims are believed to be allowable. This amendment is believed responsive to all points in the Office Action. A separate sheet showing the claim amendment is enclosed. In light of the foregoing amendment markup and remarks, it is believed that the application is in condition for allowance, prompt allowance is respectfully solicited.

Should the Examiner have any remaining questions, she is encouraged to contact the undersigned attorney at the telephone number below to expeditiously resolve such concerns.

Please charge any additional fees or credit overpayment to Deposit Account No. 04-1415.

Signed at Denver, Colorado, this 16th day of June 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. J. Prendergast', written over a horizontal line.

Paul J. Prendergast, Reg. No. 46,068

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

Claim 1 has been amended as follows:

1. (Amended Thrice) A cat toy comprising:[....]
a flexible elongated tube capable of being positioned in a multitude of S-shaped curves, the tube having a first end, a second end, and a middle portion, the elongated tube made from a crinkly plastic film molded to a plurality of spring-steel coiled wire loops which form a helical frame structure, the helical frame structure having at least one loop per inch along the entire length of the elongated tube, the middle portion of the elongated tube having an interior surface and exterior surface, and a layer of fabric attached to the interior surface of the middle portion and a second layer of fabric attached to the exterior surface of the middle portion, wherein movement of a cat or other pet within the elongated tube causes the emission of noise from the crinkly plastic film.

9. (Amended Twice) The cat toy of claim 1 wherein [the] a catnip treat is suspended from an interior surface of the middle portion.